

FILED

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2 (Firm State Bar No. 14000)

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MARY ELLEN DUNLAP
CLERK OF SUPERIOR COURT

BY _____
DEPUTY

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8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF COCHISE

10 THE STATE OF ARIZONA,

No. S0200 CR 2018 00725

11 Plaintiff,

12 STATE'S ALLEGATION OF
AGGRAVATING CIRCUMSTANCES
13 PURSUANT TO A.R.S. § 13-701 (D)

14 v.
15 DAVID ALAN HUNT,

Assigned to the Hon. Wallace R. Hoggatt
Division 3

Defendant.

16 The State of Arizona, pursuant to A.R.S. § 13-701 (D) and *Blakely v.*
17 *Washington*, 124 S.Ct. 2531 (2004), gives notice that the following
18 aggravating circumstances may be present in this case, and requests a jury
19 determination of whether an aggravating circumstance or aggravating
20 circumstances exist.

- 21 1. Infliction or threatened infliction of serious physical injury,
22 except if this circumstance is an essential element of the
23 offense of conviction or has been utilized to enhance the range
24 of punishment under A.R.S. § 13-604.
- 25 2. Use, threatened use or possession of a deadly weapon or
26 dangerous instrument during the commission of the crime,

1 except if this circumstance is an essential element of the
2 offense of conviction or has been utilized to enhance the range
3 of punishment under A.R.S. § 13-604.

4 3. If the offense involves the taking of or damage to property, the
5 value of the property so taken or damaged.

6 XXX 4. Presence of an accomplice.

7 XXX 5. Especially heinous, cruel or depraved manner in which the
8 offense was committed.

9 XXX 6. The Defendant committed the offense as consideration for the
10 receipt, or in the expectation of the receipt, of anything of
11 pecuniary value.

12 XXX 7. The Defendant procured the commission of the offense by
13 payment, or promise of payment, of anything of pecuniary
14 value.

15 XXX 8. At the time of the commission of the offense, the Defendant
16 was a public servant and the offense involved conduct directly
17 related to the Defendant's office or employment.

18 XXX 9. The victim or, if the victim has died as a result of the conduct
19 of the Defendant, the victim's immediate family suffered
20 physical, emotional or financial harm.

21 XXX 10. During the course of the commission of the offense, the death of
22 an unborn child at any stage of its development occurred.

23 XXX 11. The Defendant was previously convicted of a felony within the
24 ten years immediately preceding the date of the offense. A
25 conviction outside the jurisdiction of this state for an offense
26 that if committed in this state would be punishable as a felony

1 is a felony conviction for the purposes of this paragraph.

- 2 12. The Defendant was wearing body armor as defined in A.R.S. §
3 13-3116.
- 4 13. The victim of the offense is at least sixty-five years of age or is
5 a disabled person as defined by A.R.S. § 38-492.
- 6 14. The Defendant was appointed pursuant to title 14 as a
7 fiduciary and the offense involved conduct directly related to
8 the defendant's duties to the victim as fiduciary.
- 9 15. Evidence that the Defendant committed the crime out of malice
10 toward a victim because of the victim's identity in a group
11 listed in A.R.S. § 41-1750, subsection A, paragraph 3 or
12 because of the Defendant's perception of the victim's identity in
13 a group listed in A.R.S. § 41-1750, subsection A, paragraph 3.
- 14 16. The Defendant was convicted of a violation of A.R.S. §§
15 13-1102, 13-1103, 13-1104, subsection A, paragraph 3 or
16 13-1204, subsection A, paragraph 1 or 2 arising from an act
17 that was committed while driving a motor vehicle and the
18 Defendant's alcohol concentration at the time of committing
19 the offense was 0.15 or more. For the purposes of this
20 paragraph, "alcohol concentration" has the same meaning
21 prescribed in A.R.S. § 28-101.
- 22 17. Lying in wait for the victim or ambushing the victim during
23 the commission of any felony.
- 24 18. The offense was committed in the presence of a child and any
25 of the circumstances exist that are set forth in A.R.S. §
26 13-3601, subsection A.

19. The offense was committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.
 20. The Defendant was impersonating a peace officer as defined in A.R.S. § 1-215.
 21. The Defendant was in violation of 8 United States Code §§ 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.
 22. The Defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense. For the purposes of this paragraph:
 - (a) "Authorized remote stun gun" means a remote stun gun that has all of the following:
 - I. An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.
 - II. A serial or identification number on all projectiles that are discharged from the remote stun gun.
 - III. An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.

1 IV. A training program that is offered by the
2 manufacturer.

3 (b) "Remote stun gun" means an electronic device that
4 emits an electrical charge and that is designed and
5 primarily employed to incapacitate a person or animal
6 either through contact with electrodes on the device
7 itself or remotely through wired probes that are
8 attached to the device or through a spark, plasma,
9 ionization or other conductive means emitting from the
10 device.

- 11 _____ 23. During or immediately following the commission of the offense,
12 the Defendant committed a violation of either A.R.S. §§ 28-661,
13 28-662 or 28-663.
- 14 _____ 24. The defendant was convicted of a violation of section 13-1307 or
15 13-1308 and the defendant recruited, enticed or obtained the
16 victim from a shelter that is designed to serve runaway youth,
17 foster children, homeless persons or victims of human
18 trafficking, domestic violence or sexual assault.
- 19 _____ 25. The defendant was convicted of a violation of A.R.S. §13-1204
20 and there is evidence that the defendant committed the crime
21 out of malice toward a victim because of the victim's
22 employment as a peace officer.
- 23 _____ 26. During or immediately following the commission of the offense,
24 the defendant used a mask or other disguise to obscure the
25 defendant's face to avoid identification.
- 26 _____ 27. Any other factor that the state alleges is relevant to the

Defendant's character or background or to the nature or circumstances of the crime.

If the jurors find the Defendant guilty of the criminal charge, then they shall also try whether the sentencing allegation is true. Ariz. R. Crim. P.19.1(c)(2)(B).

If the jurors find that at least one aggravating circumstance exists beyond a reasonable doubt, this Court, in determining the appropriate sentence, may then consider in aggravation any fact relating to the character of the Defendant or the nature and circumstances of the crime and weigh them against mitigating circumstances. *State v. Martinez*, 210 Ariz. 578, ¶ 26 (2005).

RESPECTFULLY SUBMITTED this 19th day of December, 2018.

MARK BRNOVICH
ATTORNEY GENERAL

TODD C. LAWSON
Assistant Attorney General
Criminal Division

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1 ORIGINAL of the foregoing filed
2 this 19th day of December, 2018, with:

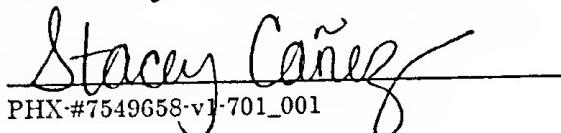
3 Clerk of the Superior Court
4 100 Quality Hill Road
Bisbee, Arizona 85603

5 COPY of the foregoing delivered
this 19th day of December, 2018, to:

6 The Honorable James L. Conlogue
Cochise County Superior Court
7 P.O. Drawer CJ
Bisbee, Arizona 85603

8 COPY of the foregoing mailed
9 this 19th day of December, 2018, to:

10 Joseph P. DiRoberto, Esq.
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11 Tucson, Arizona 85718
Attorney for Defendant David Alan Hunt (CR 2018-00725)

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13 PHX-#7549658-v1-701_001

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